IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 1443 OF 2004
IN
SECOND APPEAL NO. 64 OF 1995

Office Notes, Office Memoranda of of Coram, appearances, Court's orders and Registrar's orders : Court's or Judge's orders

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Mrs. Koparkar holding for Nitin P. Deshpande for the applicant.

Ms. Baxi for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 15TH JULY, 2005

P.C.:

1. Heard learned counsel for the applicant as well as respondent No.1. Respondent No.2 is reported to be dead in whose favour the order was passed to the effect that she would be at liberty to withdraw the deposited amount on furnishing surety to the satisfaction of the Trial Court. However, it is submitted that since the respondent No.2 is dead and applicant-plaintiff is her one of two sons, it would be just and proper that he gets 50% of the amount of Rs.10,000/- to which their deceased mother was entitled vide order of the Court. Hence, the application is partly allowed to the extent of

prayer clause (a) and applicant is held entitled to withdraw the amount of Rs.5,000/- which were directed to be deposited, as the remaining amount of Rs.5,000/- would belong to remaining legal heir of deceased Sundarabai.

2. It is submitted that applicant has also deposited the maintenance amount in the lower Court but deceased Sundarabai has not withdrawn the said amount. There is nothing on record to show that Sundarabai did not withdraw the said deposited amount, however, it is quite clear that once that amount deposited in the Trial Court was the one of which deceased Sundarabai had right, then the applicant would be entitled to withdraw only one and half of the said deposited amount.

3. Hence, it is directed that - (i) the applicant is relieved of his obligation to deposit the maintenance amount as respondent No.2 has died. (ii) He is entitled to withdraw Rs.5,000/- from the

amount of Rs.10,000/- which was deposited pursuant to the order of this Court. (iii) The applicant shall be entitled to withdraw 50% of the accumulated maintenance amount deposited by him in the lower Court.

With these directions, the application stands disposed of with no order as to costs.

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